

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALFRED WHITEFIELD,)
)
Plaintiff,)
)
vs.) **Civil No. 22-cv-154**
)
CRYSTAL GREENWALT, *et. al.*,)
)
Defendants.)

MEMORANDUM ORDER

This case was referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. On January 8, 2024, the Magistrate Judge issued a Report and Recommendation, recommending that Defendants' Motion to Dismiss be granted in part and denied in part. ECF No. 87. The parties were informed that objections to the Report and Recommendation were due by January 22, 2024, for the electronically registered Defendants, and by January 25, 2024, for the non-electronically registered party Plaintiff. After obtaining an extension of time to file, on February 6, 2024, Plaintiff Alfred Whitefield filed his "Objections to Magistrate's Report and Recommendation)." ECF No. 90.

The filing of timely objections requires the district judge to "make a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); Fed. R. Civ. P. 72(b)(3). In doing so, the district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Mr. Whitefield does not pose any objections to the Magistrate Judge's Report and Recommendation, but he does request that he be given leave to amend his denial of access to the courts claim. Mr. Whitefield states his agreement with the Report's reasoning in support of dismissing all remaining claims and states that he voluntarily withdraws said claims. He also agrees with the recommendation to dismiss individual Defendants Kutec, John, Jordan, Greenwalt, Zaken, Andreetti, and Ankrom and states that he voluntarily removes said Defendants from the civil action. ECF No. 90, at 2.

Given the lack of objection, the Court will adopt the Report and Recommendation as the Opinion of the Court. The Court will therefore dismiss the Amended Complaint and permit Mr. Whitefield the opportunity to amend his claims to the extent he can cure the deficiencies identified in the Report.

Accordingly, the following Order is hereby entered.

ORDER

AND NOW, this 16th day of February 2024, IT IS ORDERED that the Report and Recommendation, ECF No.87, filed on January 8, 2024, is adopted as the Opinion of this Court.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss, ECF No. 81, is DENIED in part and GRANTED in part.

- A.** The Motion is Denied as to Plaintiff's claims related to placement in the Restricted Housing Unit (RHU) with respect to Defendant's argument that such claims should be dismissed for failure to exhaust administrative remedies (but said claims are dismissed for the reasons stated below).
- B.** The Motion is Granted as to all remaining claims and Defendants as follows:
 1. Plaintiff's denial of access to courts claims in Count I and III.

2. Plaintiff's procedural due process claim in Count II as to missing legal materials.
 3. Plaintiff's due process claim in Count II related to placement in the RHU.
 4. Plaintiff's false imprisonment/unlawful confinement claim in Count IV related to his placement in the RHU.
 5. Plaintiff's Eighth Amendment claim in Count IV related to his placement in the RHU.
 6. All remaining claims are dismissed for failure to state a claim upon which relief can be granted.
 7. The individual Defendants Kutec, John, Jordan, Greenwalt, Zaken, Andreetti, and Ankrom are dismissed from this action.
- C.** The Amended Complaint, ECF No. 71, is hereby DISMISSED for the reasons explained in detail in the Magistrate's Report.
- D.** Plaintiff is granted leave to file an amended complaint consistent with the Report and Recommendation on or before March 25, 2024. If no amended complaint is filed by March 25, 2024, this Order dismissing the Complaint will become final and this case will be closed.

This matter is returned to the Magistrate Judge for further proceedings.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Court Judge

Alfred Whitefield
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